

**Texas Department of Health**

William R. Archer III, M.D.  
Commissioner of Health

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The Honorable Dan Morales  
Attorney General of Texas  
209 W. 14th Street  
Austin, Texas 78701

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I.D.# 40075 FEB 12 1998

Dear General Morales:

Opinion Committee

I am writing to request an Attorney General's Opinion under authority of Texas Gov't Code Ann. §402.042(b)(2).

Since 1977, Vernon's Ann. Civ. St. art. 4447e-2, §1 (now, Health and Safety Code §673.002) has required that if a child under the age of two in Texas dies suddenly or is found dead and the cause of death is unknown, the justice of the peace, coroner, or medical examiner must inform the child's parents or legal guardian that if they request an autopsy, the state will pay the reasonable costs of the autopsy. The commissioner of health must determine whether a claim for the costs of the autopsy is reasonable and proper, and if so, shall instruct the comptroller to pay the claim from funds appropriated for that purpose.

In 1995, the 74th Legislature adopted Family Code, Chapter 264, Subchapter F, establishing child fatality review teams and procedures for investigations. If, after an inquest by the medical examiner or justice of the peace under Chapter 49, Code of Criminal Procedure, the death of a child under six years of age in Texas is determined to have been unexpected, the appropriate law enforcement agency must be notified, and that agency shall investigate the child's death. A death investigation under Family Code §264.514 must include an autopsy unless the autopsy was conducted as part of the inquest.

Health and Safety Code §673.002 has never been repealed or amended by the Legislature, and Family Code, Chapter 264 requires no involvement by the commissioner of health in obtaining reimbursement for counties for the cost of autopsies conducted as part of investigations of child fatalities. No general revenue funds have been appropriated to the Texas Department of Health for this purpose, but the department has allocated approximately \$20,000 annually from federal maternal and child health grant funds to pay a portion of these claims for pediatric autopsies.


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**QUESTION:**

Has the obligation of the Commissioner of Health to review and authorize payment of claims by the comptroller for the reasonable and proper costs of autopsies conducted pursuant to Health and Safety Code §673.002 been superseded by the provisions of Family Code, Chapter 264, Subchapter F?

The department's Office of General Counsel has answered this question in the affirmative, and the basis for that conclusion may be found in the enclosed legal opinion. Your consideration of this request will be greatly appreciated. If you need additional information or have questions, please contact the assigned staff attorney, Michael G. Young, at (512) 458-7236.

Sincerely,



William R. Archer III, M.D.  
Commissioner of Health

c: Senator Judith Zaffirini  
Senator Florence Shapiro